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Supreme Court, U.S.
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No. 03-1388

IN THE

Supreme Court of the United States

Douglas Spector, *et al.*,
Petitioners,

v.

Norwegian Cruise Line Ltd.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

REPLY BRIEF FOR THE PETITIONERS

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PARTIES TO THE PROCEEDING BELOW

Petitioners advise the Court that named petitioner Rodger Peters has died.

REPLY BRIEF FOR THE PETITIONERS

The parties and their *amici* all agree that this case presents a square conflict over an important and recurring question of federal law and that it provides an appropriate vehicle for this Court to resolve the issue. Petitioners accordingly will reply only to respondent's extended argument regarding the framing of the question presented.

As set forth in the Petition, the case presents the question "[w]hether and to what extent Title III of the Americans With Disabilities Act applies to companies that operate foreign-flag cruise ships in United States waters?" Pet. i. Respondent urges this Court to rewrite the question with "a convenient and accepted shorthand" as "whether Title III [of the ADA] applies to 'place[s] of public accommodation' on foreign cruise ships or to 'specified public transportation services' offered by foreign cruise ships." Response 9.

Respondent's proposed formulation unjustifiably narrows the issues raised in this case. Petitioners' complaint challenges more than their exclusion from particular "place[s] of public accommodation" or the physical accessibility of "specified public transportation services" on respondent's ships. Petitioners allege also that respondent discriminates against people with disabilities and their companions in its pricing, see Pet. 1, 4 (citing Amended Complaint ¶ 17); that respondent discriminates against people with disabilities in its requirement that all disabled customers travel with an able-bodied companion (at full fare) even if the disabled passenger is fully self-sufficient, see Petrs. C.A. Br. 5 & n.2; and that respondent discriminates against both disabled passengers and their companion passengers in the services and facilities it makes available on board its ships, see Pet. 4-5 (citing Amended Complaint ¶ 18).

All these issues were addressed by the courts below. After the district court held that petitioners' non-barrier-related allegations stated a claim under Title III of the ADA (see Pet. 5 (citing Pet. App. 28a, 47a)), the Fifth Circuit

reversed. Particularly relevant here, the court of appeals held that petitioners could not state a claim under Title III *in any respect*; it drew no distinction between the physical accessibility of respondent's ships and petitioners' remaining ADA claims. See Pet. App. 15a ("we reverse the district court to the extent that *any* Title III ADA claims remained" (emphasis added)).[1]

[1] Respondent's passing contention in a footnote (Response 11 n.8) that petitioners have somehow waived this argument is meritless. The only claims dismissed by the district court were petitioners' barrier removal claims. Petitioners, therefore, were the *appellees* with respect to their remaining claims and could not have waived these claims by failing to raise them on appeal. Petitioners nonetheless fully preserved in the Fifth Circuit their claims that clearly did not involve the extraterritorial application of the ADA. *E.g.*, Petrs. C.A. Br. 5 & n.2 ("NCL requires its disabled customers to travel with a companion (at full fare) regardless of whether the disabled passenger is self-sufficient. This practice is only one of the many discriminatory selection and eligibility criteria applied to passengers with disabilities."); *id.* at 6 ("mobility-impaired passengers are continually and consciously subjected to discriminatory policies, practices, and treatment by NCL, including * * * NCL's deliberate and conscious practice of charging disabled passengers (and their *required* traveling companions) higher fares than non-disabled passengers and other illegal surcharges for reasonable accommodations"); Petrs. C.A. Reply 23-24 ("Moreover, not all of the relief that Plaintiffs seek would 'have to be enforced outside of United States territory.' *See NCL's Brief* at 21. In that regard, Plaintiffs requested relief that includes such items as requiring NCL to (i) refrain from its current practice of charging disabled passengers (and their required traveling companions) higher fares than non-disabled passengers; (ii) refrain from offering NCL services for sale to persons with disabilities which are not accessible to persons with disabilities; (iii) refrain from imposing eligibility criteria that are not applied to passengers who are not disabled; and (iv) include its mobility-impaired passengers in the emergency evacuation plans and provide those passengers with a means of evacuation. [7 R. 19] Clearly, this conduct takes place in the United States and its territorial waters.").

Given the scope of petitioners' complaint and the court of appeals' ruling, respondent's proposed reformulation of the question presented is too narrow. Some of the policies petitioners challenge as violative of Title III occur entirely on land – for example, respondent's pricing practices – and respondent's reformulation may exclude those issues. Other policies involve the treatment of the disabled petitioners' able-bodied companions and thus do not involve questions of physical accessibility at all. The failure to include those aspects of petitioners' complaint within the question presented would commit this Court (like the court of appeals) to mistakenly concluding that if for some reason the barrier-removal requirements of Title III do not apply to foreign-flagged cruise ships, the cruise line is thereby left free to discriminate against people with disabilities and their companions in its pricing decisions and in the services it offers even if nondiscrimination would require no ship-board modifications at all.

In support of its attempt to narrow the question presented, respondent observes that this case does not involve "the circumstances under which Title III applies to services provided by *land-based accommodations* operated by foreign companies" (Response 7 (emphasis added)). That observation is entirely beside the point. Petitioners have never contended that the case presents any such issue, and the Court accordingly would not decide it.

CONCLUSION

Certiorari should accordingly be granted with respect to the question presented as framed by the Petition for Certiorari.

Respectfully submitted,

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[2] Counsel for petitioners in this case are assisted by the students in the Stanford Law School Supreme Court Litigation Clinic.